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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 27 2006

SRC 05 181 51360

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research instructor at the Medical University of South Carolina (MUSC). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We note that 8 C.F.R. § 204.5(k)(4)(ii) states that, to apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The record does not contain this required document, and therefore the petitioner has not properly applied for the national interest waiver. The director, however, did not note this omission in the denial notice or in the request for evidence to allow the petitioner to remedy the omission. We will, therefore, review the matter on the merits.

Along with copies of the petitioner's academic credentials and published and presented work, the petitioner submits numerous witness letters. We shall consider examples of these letters here. Most of the letters are from individuals who have taught, supervised, or collaborated with the petitioner; half of the letters are from MUSC faculty members.

The only witness who does not claim or show close ties to the petitioner or her employer is [redacted], an assistant professor at the University of Michigan Medical School. [redacted] states:

> Over the past 2-3 years, I came to know of [the petitioner's] work through her publications. In addition, I had the opportunity to meet her and hear her present her work at an international meeting. . . .
>
> [A]t the Medical University of South Carolina . . . [the petitioner] began a highly productive research program to study the biological mechanisms by which a group of cells known as fibroblasts mediate scarring of tissues/organs in patients suffering from scleroderma, an immune-mediated disease that typically afflicts young women. Therapeutic options for this

> disease are limited at the present time and novel therapeutic strategies are desperately needed. [The petitioner] was the first to show that aberrant signaling in scleroderma fibroblasts involving transforming growth factor-β (TGF-β) receptors expression may underlie the constitutive activation of these cells in disease states. Specifically, she showed that expression of the type I TGF-β receptor was increased relative to the type II receptor in scleroderma fibroblasts and this was associated with higher basal levels of collagen (matrix) production by these cells, an effect that was insensitive to blockade of signaling from the type II TGF-β receptor. This study has important implications in the future design of treatment strategies that target the activation of specific receptors at the cell membrane. Moreover, [the petitioner's] research presentation at the international Keystone symposium in Colorado earlier this year demonstrated that TGF-β may mediate its fibrotic effects via pathways that are independent of the canonical/established pathways involving Smad proteins. These new insights will allow us to design more specific and less toxic therapies for scleroderma and other fibrotic diseases in humans that are, almost universally, linked to exaggerated TGF-β signaling.

Professor [redacted], who has supervised the petitioner's work at MUSC, states:

> [The petitioner] joined my laboratory in 2000 to conduct research on the abnormal regulation of the extracellular matrix (ECM) protein synthesis in scleroderma. . . . Excessive ECM deposition is the hallmark of scleroderma occurring in all target organs, and there is no available cure to stop the progression of the disease. Better understanding of the dysregulated ECM deposition should lead to the design of new therapeutic approaches. [The petitioner] has made several novel, important observations that may not only help to explain the mechanism of abnormal ECM production by scleroderma fibroblasts, but also lead to future therapeutic intervention. . . .Specifically, [the petitioner] has demonstrated that fibroblasts derived from scleroderma patients have augmented responses to a factor termed connective tissue growth factor (CTGF), which is abundant in scleroderma lesions. Furthermore, her work has shown that this response requires costimulatory signal from the insulin pathway. . . . In a different study, [the petitioner] has observed that fibroblasts from scleroderma patients have a higher abundance of TGF-beta receptor type I. . . . This finding is highly significant as it may provide the explanation for the abnormal behavior of scleroderma fibroblasts with respect to ECM production. [The petitioner] is currently dissecting this mechanism. . . .
>
> [The petitioner] has made unique contributions to the field of scleroderma. Furthermore, her discoveries form a basis for future therapies [for] . . .rheumatoid arthritis, lupus, as well as cancer.

MUSC Professo[redacted] states that the petitioner "has made landmark contributions to the field of scleroderma. I believe that her work is among the most important findings in scleroderma research today." [redacted], an associate professor at MUSC, states that the petitioner "is indispensable on a national scale in the fight against rheumatoid and fibrotic diseases." Others who have worked with the petitioner describe her work in varying degrees of detail and assert that the petitioner has performed important research.

On June 28, 2005, the director issued a request for evidence, instructing the petitioner to submit documentation to show that the petitioner meets the guidelines set forth in *Matter of New York State Dept. of Transportation*. The director specifically requested "evidence of the extensive citation record of the beneficiary's research" and "evidence from independent researchers stating to [*sic*] the beneficiary's contributions and the impact on the field."

The petitioner's response includes documentation of citation of her work. Counsel states: "Since her publications were from 2003 and 2004, there has not been much opportunity for researchers to cite to her work, since these publications are usually several years in the making. However, considering the recent release of [the petitioner's] own articles, it is significant that she has been cited several times to date." Counsel adds: "This year will also see extensive citation to her research in new publications," but this statement appears to be nothing more than speculation; there is no evidence that counsel has surveyed other researchers to confirm that such citations are, in fact, known to be forthcoming.

Two documents that counsel lists among the petitioner's claimed citations are databases of articles. Inclusion in listings of this kind is not "citation" in the usual sense of the term; the listings are not, themselves, presentations of original research findings, and appearance in such listings does not demonstrate influence upon other researchers.

Apart from the two lists, the petitioner submits copies of ten articles that cite the petitioner's work. Four of these articles were co-authored by the petitioner herself or her acknowledged collaborators, leaving six independent citations. Printouts from http://scholar.google.com show ten citations of the petitioner's work, including four self-citations. The copies and printouts overlap somewhat, resulting in a total of ten documented independent citations of the petitioner's work.

One citing article, from *Current Opinion in Nephrology and Hypertension*, ends with a list of 82 "References and recommended reading." This section begins: "Papers of particular interest, published within the annual period of review, have been highlighted as: • of special interest / •• of outstanding interest." The petitioner's article is not highlighted.

Regarding the director's request for independent witness letters, counsel asserts "two of the previously submitted letters, from [redacted] and [redacted] were also from independent reviewers – neither researcher collaborated with" the petitioner. The [redacted]' in question is [redacted] an associate professor at MUSC who states "I have known [the petitioner] since August 2000 when she joined the laboratory of my collaborator [redacted]. . . . I therefore have first-hand knowledge of [the petitioner's] excellence as a research scientist." It is clear that [redacted] familiarity with the petitioner's work is not based on reputation alone.

The petitioner submits several new witness letters. Professor [redacted] chairman of the Department of Dermatology and Plastic and Reconstructive Surgery at Kumamoto University, Japan, deems the petitioner to be "one of the outstanding researchers in the field of Scleroderma research." [redacted] an

associate professor at the University of Texas Health Science Center at Houston, deems the petitioner to be "a rising star in the scleroderma research community" who "has already made important contributions."

Other witnesses show somewhat less enthusiasm. section head of Signal Transduction and Aging at Leiden University Medical Center, the Netherlands, describes the petitioner's work but does not go as far as Prof. [redacted] instead asserts that "given the right opportunity, [the petitioner] has the capacity to mature into an independent scientist who will contribute immensely to the understanding of Scleroderma." [redacted] a senior scientist at Scios, Inc., deems the petitioner to be "one of the most promising individuals among the young investigators in the field of Scleroderma/TGF-beta research" and states that "with the proper support . . . she has the potential to be come a highly successful scientist."

The letters and citations show that the petitioner's work has begun to attract notice within the specialty. The divergent assessments of the petitioner's work indicate that her reputation in the field is still embryonic; some witnesses assert that she already stands out in the field, whereas others state only that she has the "promise" of becoming an excellent scientist if certain conditions are met at some future time.

The director denied the petition, stating that the petitioner has not documented significant independent citation of her published work, and that many of the witness letters simply describe her work and attest to the petitioner's future promise. The director determined that the petitioner has documented minimal influence on the field as a whole.

On appeal, counsel repeats the argument that the petitioner's articles have not existed long enough to be cited many times. Counsel also asserts "there is a very limited community of scientists specializing in the field of Scleroderma Research." Counsel offers no figures to back up these claims. We acknowledge that smaller specialties will produce fewer citations, but the burden is still on the petitioner to show that her work is heavily cited compared to the work of other scleroderma researchers.

Counsel asserts that the petitioner's "work has been cited 3-4 additional times from the point the RFE reply was submitted, thus proving that it is only a matter of time before her citation record will be considerable." Counsel does not explain this logic, which fails to take into account what is known as the "half-life" of a given article. It is not the norm for an article, once published, to be cited at a steady rate perpetually thereafter; after a certain point, further progress in the field makes the information in the article outdated, and citation drops off. Also, when considering counsel's latest prediction, we recall counsel's earlier prediction that "[t]his year will also see extensive citation to her research in new publications." Given that counsel now acknowledges only "3-4 additional citations," it seems safe to say that counsel's confident forecast of "extensive citation" "this year" has not come to pass. We note that one of these new citations is from a witness who has previously identified himself as one of the petitioner's collaborators.

Counsel goes on to offer claims regarding the importance of various prior submissions. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

An electronic mail message shows that, in October 2005, the editors of *Arthritis Care & Research* invited the petitioner to review a manuscript submitted for publication in that journal. Nothing in the message indicates that participation in peer review is a rare privilege in the specialty, rather than an obligation that is generally expected of qualified researchers.

Two MUSC officials, in a joint letter, assert that the petitioner is highly qualified in her field, and that if MUSC pursued labor certification on the petitioner's behalf, then MUSC may be forced to offer the position to a less-qualified worker who lacks the petitioner's specialized expertise. We are not heedless of these arguments, but an employer's preference for a particular job candidate is not inherently a national interest issue. The officials indicate that the petitioner "is poised to apply for independent research funding."

A supplement to the appeal includes documentation showing that she was named as the principal investigator on a recent grant application, apparently prepared after the letter discussed above. Being the principal investigator on a grant-funded project is not, itself, *prima facie* evidence of eligibility for the waiver. Even if it were otherwise, there is no evidence that the petitioner was a principal investigator when she filed the petition in June 2005. The beneficiary of an immigrant visa petition must be eligible at the time of filing; approval cannot rest on new facts at a later time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Material changes to a petition that has already been filed cannot remedy such deficiencies. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998).

Clearly the petitioner is a productive researcher whose work has begun to attract some notice outside of her circle of collaborators. If counsel's predictions about the petitioner's imminent acclaim eventually come to pass, then any new evidence of recognition and impact could form the basis of a new petition. As it now stands, however, the existing petition now before us appears, at best, to have been filed prematurely.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.